In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 753

93 COURT CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1–7) is reported at 350 F. 2d 386. The opinion of the district court (R. 32a–36a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1965. The petition for a writ of certiorari was filed on November 18, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

796-613—65

QUESTION PRESENTED

Whether actions brought by the United States to enforce claims originally possessed by the Reconstruction Finance Corporation are subject to State statutes of limitations.

STATEMENT

Petitioners obtained a loan from the Reconstruction Finance Corporation and executed a mortgage as security therefor. The RFC was later abolished,[1] the Small Business Administration (an executive agency) was given responsibility for the RFC's "remaining functions with respect to or arising out of programs of financial assistance to business enterprises * * *," and petitioners' note and mortgage, accordingly, were assigned to the United States. The United States subsequently brought this action to foreclose the mortgage, and moved for the appointment of a receiver. Petitioners resisted, contending that the New York statute of limitations barred the suit. The district court granted the government's motion, holding that the limitations defense is "not available against the government" (R. 33a). The court of appeals affirmed.

ARGUMENT

The decision of the court of appeals is clearly correct and there is no conflict between circuits. Accordingly, further review is not warranted.

Rights of action of the United States are time-barred only where Congress specifically provides a

[1] Reorganization Plan No. 1 of 1957 (71 Stat. 647, 22 F.R. 4633, set forth as a note to 15 U.S.C. 601).

limitations period. *E.g., United States* v. *Summerlin*, 310 U.S. 414. Since rights of public corporations such as the RFC are deemed rights of the United States (*Cherry Cotton Mills* v. *United States*, 327 U.S. 536, 539; *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 384), this principle applies with equal force to a suit upon a claim originally possessed by that agency. Hence, the only other court of appeals to consider this question has concluded, in harmony with the court below in the present case, that a government suit to enforce a claim of the RFC is not subject to any State statute of limitations. *United States* v. *Borin*, 209 F. 2d 145, 148–149 (C.A. 5), certiorari denied, 348 U.S. 821. Petitioners contend, however, that these holdings are inconsistent with *Keifer & Keifer* v. *RFC*, 306 U.S. 381, and *RFC* v. *Menihan Corp.*, 312 U.S. 81.

In *Keifer*, the Court declined to extend the sovereign immunity doctrine to regional corporations created by the RFC, noting that Congress had expressly made the parent corporation itself—RFC—amenable to suit, and that the sovereign immunity doctrine ought, in any event, not be extended unduly in view of the drastic consequences of barring persons injured by acts of a public body from all legal remedy. Here, in contrast, there is no question of denying anyone his day in court. The question, rather, is whether the government's legal remedy should be forfeit by reason of its delay in bringing suit. To hold the government's action barred would contravene "the great public policy of preserving the public rights, revenues, and property from injury and loss, by the

negligence of public officers [in failing to sue promptly]." *United States* v. *Hoar*, 26 Fed. Cas. 329, 330 (No. 15,373) (D. Mass.) (Mr. Justice Story). Nothing in the reasoning or result of *Keifer* casts doubt on the continuing validity of this policy, which, indeed, was reaffirmed in *United States* v. *Summerlin, supra*—decided after *Keifer*.

RFC v. *Menihan Corp., supra*, held only that the RFC was not exempt from the payment of costs accruing in litigation to which it was a party. Since Congress had not expressly extended to the RFC the government's immunity from payment of costs, the Court was simply applying the principle that "[e]ven the * * * sovereign by joining in suits accepts whatever liabilities the court may decide to be a reasonable incident of that act" (*Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 134). This result left undisturbed the principle here applicable—that the United States is not deemed to forfeit its legal claims by the delays of its officers in suing upon them. Further, the result in *Menihan* was reversed by Congress. See 15 U.S.C. 603(a); *Republic of France* v. *United States*, 307 F. 2d 493, 496 (C.A. 5).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1965.

*The Solicitor General having disqualified himself.

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